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STERILIZATION OF THE UNFIT.

THE subject of sterilization is a comparatively new one; since 1907, however, the number of converts gained to it and, in fact, to the whole subject of eugenics is remarkable. Perhaps the most important branch of eugenics is that of sterilization; and this article is written in an effort to give some color of right to statutes which have been passed on the subject.

Much of the writing upon this question has been confined to operations upon the insane or criminal insane; but it is the purpose of this paper to consider the advisability of performing the operation upon all of the unfit, a class that includes not only the insane, the criminal insane, but rapists, syphilitics and degenerates.

One of the strongest arguments against resorting to the operation is that advanced by a member of a well-known New York law firm, whose article appeared in September, 1913, in the *Journal of the American Institute of Criminal Law and Criminology*. In this article there is a review of some of the statutes which have been passed upon the subject of sterilization. The author treats the question largely from the standpoint of a lawyer and a technical lawyer at that. He undertakes to show that under the 14th amendment of the federal Constitution, and possibly under other portions as well, acts providing for sterilization are unconstitutional. But it seems that much of his article loses force because of the strain of sarcasm and hypercriticism which pervades it. These statutes are likened by him to the Statute 22 Henry VIII, c. 9 (A. D. 1530), which is reproduced here to the extent that it is set forth in the above article, namely: "The King's royal majesty, calling to his most blessed remembrance that the making of good and wholesome laws and due execution of the same against the offenders thereof is the only cause that good obedience and order hath preserved in this realm." * * * "Of his most wicked and damnable disposition, did cast a certain venom of poison into a vessel, replenished with yeast or barm, standing

in the kitchen of the reverend father, John, Bishop of Rochester, at his place in Lambeth Marsh; with which yeast or barm, and other things convenient, porridge or gruel was forthwith made for his family there being; whereby not only the number of the seventeen persons of his said family did eat of that porridge, were mortally infected or poisoned, (but) one of them, that is to say, Bennet Curwan, gentleman, is thereof deceased." * * *

"And therefore, our said sovereign Lord, the King, of his blessed disposition, inwardly abhorring all such abominable offenses."

Ordained and enacted that the said Richard should stand and be attainted of high treason; and because the detestable offense required condign punishment, it was enacted that the said Richard Rouse should be boiled to death (which was accordingly done), and that similar offenders in the future should be committed to execution by death by boiling for the same. This statute is barbarous, as were many other acts of the people of that time. It does not strain our memories to recall that, even in the early history of our own country, witches and all members of their craft were recognized and punished as public offenders. Yet do we not today, serious as were the punishments, subject the perpetrators to ridicule? Could "boiling to death," even in a semi-civilized country, be considered today as a penalty attached to any statute? And in calling the author hypercritical, justification is found for the charge in his attempted synthetic application of this statute of the 16th century. He warns us that, "A man who has been convicted of rape upon false testimony, and who shows not the slightest mental defect, shall be emasculated at the will of indifferent or malicious custodians." Does he not go to an unwarranted extreme in imagining the case of a man being convicted of rape upon false testimony? Is it not a fact that rape in most instances is practiced upon females of immature age, usually before the age of puberty? The victim of rape in a large percentage of the cases must, because of the nature of the crime, be the prosecuting witness; yet we are told that this child of undeveloped mind and body may be a perjurer, as she sobs out her testimony. It

will be noticed that in the quoted statement above a fear is entertained that under false testimony the accused will be emasculated at the will of "indifferent or malicious custodians." Again, there is the assumption that the board appointed, as in contemplation of the acts, will be indifferent to its duty and malicious in the application of it. While there are persons answering the description in every profession, not only in those of law and medicine, there was never devised an occupation in which prevails higher tone, purer mind and unproclaimed deeds of unselfish ministration than in the profession of medicine. It would be almost impossible for any appointing power to select a board composed of surgeons and other practitioners of medicine in which the majority could be of such character as to fulfill the conditions feared. Again, in using the word "emasculatation," the author strays far from the true object of these laws, namely, sterilization. They do not provide for emasculation. There may be sterilization without emasculation; but there cannot be emasculation without sterilization. In other words, the one is a very simple operation, while the other is in every case castration. If emasculation were to be resorted to as a result of these statutes, then much more force might be given to the objection. So, too, these statutes include women as well as men, and, though a woman may be sterilized, she cannot be emasculated.

It is not the purpose of this article to go into an exhaustive treatment from a legal standpoint, of the statutes providing for sterilization, nor to make any attempt to apply the Constitution to them, at least in the pedagogic way. But attention may be called to the fact that the above-mentioned writer refers to the 14th amendment of the Constitution, which reads: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." It will be noticed that the inhibition here

is that no State shall deprive any person of life, liberty, or property without due process of law. Sterilization statutes do not deprive a person of life, liberty, or property in providing for the operation. Much less do they do so without "due process of law." No man in the eyes of the law can be insane until he has been adjudged so, nor can he be a criminal until adjudged so by the proper tribunal under a constitutional proceeding. After a person has been adjudged a criminal, does he not then lose all rights of citizenship and does not this loss follow him even after the period of incarceration has expired? It would be equally reasonable to claim that the state shall have no regulation of the criminal after his conviction, as to say that sterilization shall not be practiced. In stating that in the eyes of the law a person is not a criminal until properly convicted as such, we are reminded of the definition of a tort, which, though hard to define, was generally accepted as "a conflict of two rights." But back in 1892 a law student, an unusually bright one, in an effort to gain a prize for the best legal essay, entered the competitive ranks with an effort towards giving a better definition to the world. In that paper a tort was defined to be a "judicial recognition of a conflict of two rights." The faculty, which was none other than that of the New York Law School, formerly of Columbia University, awarded him the prize. So a tort is not a tort until judicially recognized as such, nor is a man a criminal until adjudged one. Does the writer now under criticism forget the first ray of intelligence breathed into the Constitution by the great and wise framers thereof, wherein they use these words, "We, the People of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America?" Could domestic tranquillity prevail? Could there be general welfare, or would the blessings of liberty to us and our posterity be secured, if there were not restraint upon the human object of the sterilization laws as already passed? Can there be the full blessings of liberty, or full domestic tranquillity, if those civilly unfit are

allowed to procreate their species and scatter their kind here and there and everywhere amongst our people?

The State of New Jersey through its Supreme Court¹ has recently declared the statute enacted in that State as unconstitutional, while the State of Washington through its highest tribunal has declared a similar statute constitutional.² Can we say that these statutes are constitutional or unconstitutional until the highest court of the land has passed its final judgment thereon? Even then, is it not possible that that court will reach its conclusion by a vote, of five to four say, which has happened far too frequently to be satisfying, to be thoroughly satisfying, either to the winning or losing position? If these statutes are finally declared to be unconstitutional, then let the Constitution be amended so that the beneficial effects may accrue to the people and their progeny. Surely the physical and moral uplift of the nation is as important as mere revenue, in whose name the Constitution was last amended.

Some consolation might be found for the opponents of these measures by the writings of Dr. Geoffrey Clark of the Banstead Asylum, England, and of Dr. A. W. Daniel of the London County Asylum at Hanwell, as found in the *Journal of Mental Science* for January, 1912. From the article of Dr. Clark, however, it is fair to draw the conclusion that, while he does not enthusiastically advocate sterilization, his argument is certainly in favor of it. This is clearly evidenced by the following quotation from his paper: "If we are unable to show at present that sterilization would be any material aid to the race from an eugenic point of view, are there any sources in which we, as alienists, are justified in recommending the operation?" He answers that he thinks there are. The doctor avers that any woman who has had a mental breakdown at child birth should have explained to her the risk she is taking of a second attack should she again become pregnant, the risk not only of a few months' treatment in an asylum, but of permanent insanity, and that such a woman should be af-

¹ See *In re Alice Smith v. Board of Examiners*, N. J. Supreme Court, June, 1913, term.

² *State v. Feilen* (Wash.), 126 Pac. 75.

forded the opportunity of being sterilized. Among his conclusions are:

First, that, admitting inheritance to be a most important factor in mental constitution, it is yet to be shown that any practicable scheme of sterilization would materially diminish the normal increase of insanity.

Second, that we have no right to hold out that there would be a material decrease from the statistics at present at our disposal. The chief danger from the eugenic point of view is a large class of mental degenerates who are not insane.

His last conclusion is that sterilization ought to be recommended in some cases of mental disease irrespective of the eugenic standpoint. Notwithstanding these reasons, he tells us that in 1859 there were in England 36,762 known cases of insanity, or one to every 536 of the total population, while in 1909 there were 128,787 reported cases, or one to every 278 of the whole population, so that there are now three and a half times as many cases as there were fifty years ago, the proportion of the insane to the general population having doubled. A careful reading of the article shows that it is more of an argument for than against sterilization.

Dr. Daniel's article tells us of a patient admitted to Hanwell in 1911, suffering from epileptic insanity, with marked deficiency in emotional control, due to congenital defect. It required but a slight indulgence in alcohol to cause epileptic seizures and complete loss of emotional control. On being removed from her home surroundings, she rapidly resumed her normal mental state. Her husband pressed for her discharge, because he had no one to look after his seven children, and his appeals were successful. She was allowed out on a month's trial, with a view to an ultimate discharge. A relapse took place at the end of five days, owing to slight indulgence in alcohol; but too late, she was again pregnant in spite of warnings and promises both of her husband and herself. The child was born in the Hanwell Asylum, and the doctor asks to what prospects? To epilepsy, imbecility, insanity, any or all. There are seven other children. After discussing a great number of statistics, gathered from many years of experience, Dr. Daniel

reduces the number of patients in the Asylum subject to sterilization to 1.5 per centum of the total admissions. He says: "Accept this analysis as correct, and must not an answer be in the negative to the proposition that all the patients should be sterilized?" He assumes that, even if epileptics, imbeciles and criminals were all prevented from reproducing the species, yet insanity and other forms of degeneracy would still occur in degenerating families. He makes axiomatic this statement that, "degeneration of the family" is as natural as the death of the individual, that is, in degenerating families. Nowhere in his article, however, does he show himself to be opposed to the operation in general.

In advocacy of the statutes, the first impulse is to quote again from Dr. Clark's paper, this time using his ammunition to fire the gun. He states, "That breeders of stock and domestic animals do not allow the matings to go on indiscriminately, but carefully select parents with the view to the quality of the offspring desired, and that the unfit, the deformed and the diseased are not allowed to multiply." In the light of these facts he asks, "Is it not our duty to do something for the improvement of the human race by preventing the insane, the feeble-minded and the mentally defective from breeding?" He tells us that there is an ever-increasing procession to our asylums and prisons.

One of the natural results of the advances of civilization is increase of insanity. In his own writing Dr. Clark quotes from one read by Dr. Stansfield at Bexley, in England, in which that doctor asked this question: "How are we as a nation (that is the English) to overcome the evil and stem the flow of this rising tide?" He furnishes the reply in stating: "To my mind there is but one remedy, *and that is sterilization.*"

Medical authorities have suggested, and it is undoubtedly a fact, that the well-educated and the well-to-do, conscious of the hereditary taint of insanity, purposely refrain from child-birth from a sense of eugenic duty, and probably for still another reason, namely, to escape the shame which would be cast upon them by their fellow-members of society. This being so, is it not a fair deduction to note that the poorer classes, with

an hereditary taint of insanity, less able to care and provide for children, without any thought of eugenics, and without an equal degree of shame cast upon them by their fellow men, would bring into the world offspring susceptible to insanity and who must in the very nature of things become a charge upon the communities? Dr. Henri Bogart, of Brookville, Indiana, in an article appearing in the *Texas Medical Journal* for February, 1911, states, "That the degeneracy of the race is growing far beyond the normal increase of the population is too apparent to be questioned."

An authority on the subject of eugenics describes the operation producing sterilization as being a very simple one. According to his statement no anæsthetic ordinarily is used; the operation is completed in three or four minutes; there is no local congestion nor untoward result; and the desire for sexual congress, ejaculation and all other concomitants of normal coition are practically unchanged. Yet another states that the patient may immediately after the operation go about his work. The same authority makes these deductions:

1. Many of these unfortunate beings are capable of at least a small measure of improvement, especially by asexualization.
2. That wheresoever they come in contact with those of the opposite sex they have no power of controlling the sexual impulse.
3. The offspring of such are almost invariably as bad, or worse, than their parents.

Every year the ratio of dependents, against which society must protect itself, increases out of proportion to the natural population development. It seems to be agreed by all writers that heredity is a most important factor in insanity.

Ellis Island is the chief port in the United States for the reception of immigrants. Vast hordes of people from all over Europe are constantly flocking to the United States; seeking for the insane amongst the numbers is merely incidental. The object of the inspectors in their examination appears to be to ascertain whether the prospective citizen is diseased or how his or her eyesight is affected. At the time of observation an av-

erage of twenty-six hundred a day were coming in. With such an influx of immigrants and so few inspectors it is impossible to make any examination other than the one that is made, namely, a cursory review of each subject and frequently the turning back of the eyelid by means of a small wooden stick. While the inspectors are of versatile tongue, they naturally cannot converse with all nationalities, and in view of the fact that the inspection must be of an average of less than ten seconds' duration, what chance is there to ascertain any traces of insanity? Is it not fair to assume that many of these persons are mentally incompetent, who later become charges upon the community, or, what is worse, procreators of imbeciles, idiots and criminals? It has been estimated that the federal government, by reason of lax inspection, owes the State of New York many millions of dollars, that the State was or is caring for over 7,000 insane aliens at a cost of \$175.00 per person per annum. It is reasonable to suppose that similar conditions prevail in other States which contain ports of entry. Would any constitutional provision be interfered with, if those of these 7,000 aliens who are within the ages in which procreation is possible were sterilized?

We bestow care upon the breeding of our chickens, horses and cattle; is not the human being worthy of equal care? Nature provides certain immutable laws. It is the duty of our scientists to develop those laws for the benefit of mankind. And if by research it has been found that sterilization will prevent the procreation of idiots, criminals and degenerates, is it not the duty of the legislatures to enact laws which will bring it about? Has it not been for ages an undenied principle that the few must suffer for the good of the many? And when we cause these few to suffer, does it not foster and promote the preamble proclaiming the object of our Constitution? It is a well-known principle of law that a person owning real estate is supposed to own below his property to the center of the earth and above to the sky. Yet, it is also well recognized that he cannot use this property in such a way as to be a nuisance to his neighbor. Is it less true that the faculty of procreation is the gift of nature, a right in every human being,

but nevertheless a right that must be exercised in a way that it will not interfere with the rights of neighbors? Will not these rights be interfered with if procreation be permitted by the adjudged criminal, the adjudged insane, idiot or degenerate?

Enforced sterilization was resorted to in Biblical times by the Egyptians. It was practiced by the Malays, the inhabitants of Borneo, Java, some Australian Tribes, and by the American Indians. Even the Spartans recognized it, and did a more valiant people ever live?

We are told that in Pennsylvania alone there are 10,000 cases of avowed imbecility—and probably there is an equal number of cases hidden by reasons of family shame—and that of this number only 3,500 are sequestered. Yet the sexual impulse dominates the lives of those who are confined as well as those who are not confined. Students of the subject tell us that sterilization makes such beings more tractable, like the gelding of the ox or the horse, that they become more amenable to treatment, and that, therefore, far from being an injury, the slight and nearly painless operation required improves physical vigor and makes the patient contented and happy. It is a well-known fact that exaggerated sexuality is a marked characteristic of the imbecile.

Dr. N. W. Barr, in his article in the *Alienist and Neurologist* for February, 1912, calls attention to the notorious Jukes family containing over 1,200 defectives, the descendants of five degenerate sisters, and to the so-called tribe of Ishmael, which within fifty years poured over many states a flood of more than 5,000 degenerates. He tells us of his own investigation of 4,000 degenerates, among whom he found a man 38 years old who was the father of 19 defective children, all living. Both the father and the mother were under par mentally. He discovered another couple with nine imbecile children, an idiot woman with seven idiot children, and a man with two daughters and one illegitimate grandchild, all feeble-minded. This last named man served as a juryman, and shortly after an application was made for his admission to the training school for defectives. As Dr. Barr says, "Which is to be considered, the

individual of this stamp or the public?" He states he could name another family, one of the proudest of the land, in which there are five children, an aunt, two uncles, all feeble-minded; and another which in seven generations numbered 138 individuals, with records of ten still-born children, sixteen insane, seven imbeciles, three epileptics and thirty-two with pronounced mental peculiarities, and with but eighty apparently normal, but who were nevertheless hopeless slaves of neurotic heredity, direct or collateral. In his study of fifteen imbecile girls, three were recognized prostitutes; nine had each one illegitimate child (two being the result of incestuous intercourse with brothers); one had two illegitimate children; and of the two epileptics amongst them, one had three and the other four idiot children. He found that four feeble-minded women had forty illegitimate children, and that a feeble-minded woman living in an alms house since early childhood, who was allowed to go out to service periodically, gave birth to six illegitimate children, all inheriting the feeble-mindedness. He tells us of an imbecile drunkard, who is the father of three feeble-minded children. One of these a daughter, was seduced before she had reached the age of sixteen and gave birth to an idiot child. One of the sons is a harmless imbecile, while the other is a moral imbecile, a sexual pervert, a thief on the streets, and a pyromaniac, having fired in sheer wantonness a large mill property. Other instances might be given *ad infinitum*. May we not agree with the learned doctor in asking, "In these cases do we note the right of the individual to bless or to curse the race; and where may we trace the beneficence of law protecting him from society and society from him?" It is suggested that the opponents of the law will answer that the rights of the individual must be maintained. Our legislators sometimes cry, "Who dare tamper with them?" adding, "Yes, this sort of an individual must be allowed free exercise of his God-given rights, even if he does poison the life blood of his neighbor's family with his vile infusion." At the Indiana reformatory vasectomy was practiced upon some 500 males, of which number 176 were operated upon at their own request, and in each and every case of the entire 500 patients the results have

been most gratifying. As a result of vasectomy and even castration, out of eighteen cases there has been decided mental, moral and physical improvement. Dr. Barr agrees with Herbert Spencer that, "To be a good animal is the first requisite to success in life, and to be a nation of good animals is the first condition to national prosperity."

On the other hand, consider for the moment the descendants of Jonathan Edwards. Statistics relative to his 1,394 known descendants are given by a medical journal as follows: Among this number there were 395 college graduates, 65 college professors, 13 college presidents, 60 physicians, 100 clergymen and missionaries, 75 officers in the army and navy, 60 prominent authors and writers, 100 lawyers, 30 judges, and 80 public officials, one of whom was vice-president of the United States and three others United States senators. Many of the remaining ones were men of ability who took an active part in various financial and business enterprises. Not one of the 1,394 descendants, so far as is known, was ever convicted of a crime. Compare these statistics with those just enumerated and see if you cannot find an argument therein for sterilization.

In this connection it may be well to quote the following words from the song of a recent writer:

"Tell it again, tell it again,
Salvation's story, repeated o'er and o'er."

But let there be attached to these words a new meaning so as to make them ring out and proclaim to the world the story of sterilization as applied to the unfit.

J. Miller Kenyon.

WASHINGTON, D. C.